

DECISIONS PER CURIAM, ETC., FROM JANUARY
18, 1938, THROUGH APRIL 11, 1938.*

No. —, original. EX PARTE E. R. LINDSEY. January 31, 1938. The motion for leave to file petition for writ of mandamus is denied.

No. —, original. EX PARTE ALBERT B. BLEECKER. January 31, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. —, original. EX PARTE PETER GIBBONS. January 31, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. 636. ELECTRIC BOND & SHARE CO. ET AL. v. SECURITIES AND EXCHANGE COMMISSION ET AL. January 31, 1938. Jerome N. Frank and John W. Hanes, members of the Securities and Exchange Commission, substituted as parties respondent in the place of James M. Landis and James D. Ross, resigned, on motion of *Assistant Solicitor General Bell* in that behalf. Reported below: 92 F. 2d 580.

No. 730. COSMAN v. UNITED STATES. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. Decided February 7, 1938. *Per Curiam*: The motion for leave to proceed *in forma pauperis* is

*MR. JUSTICE CARDOZO was absent from the bench, on account of illness, during the period covered by this volume.

For decisions on applications for certiorari, see *post*, pp. 628, 634; for rehearing, *post*, p. 665.

granted. The petition for writ of certiorari is also granted, and the judgment is reversed. *Frad v. Kelly*, 302 U. S. 312. Mr. Myron G. Ehrlich for petitioner. No appearance for the United States. Reported below: 94 F. 2d 1020.

No. 346. *HELVERING, COMMISSIONER OF INTERNAL REVENUE, v. BOWERS, ADMINISTRATRIX*. Certiorari, 302 U. S. 670, to the Circuit Court of Appeals for the Seventh Circuit. Argued February 1, 2, 1938. Decided February 7, 1938. *Per Curiam*: The judgment is reversed upon the authority of *Tyler v. United States*, 281 U. S. 497. MR. JUSTICE CARDOZO and MR. JUSTICE REED took no part in the consideration or decision of this case. Mr. Andrew D. Sharpe, with whom Solicitor General Reed, Assistant Attorney General Morris, and Messrs. Sewall Key and Morton K. Rothschild were on the brief, for petitioner. Mr. Jay E. Darlington, with whom Mr. William N. Had-dad was on the brief, for respondent. By leave of Court, Mr. John E. Hughes filed a brief as *amicus curiae*, in support of respondent. Reported below: 90 F. 2d 790.

No. 469. *FOSTER, EXECUTRIX, v. COMMISSIONER OF INTERNAL REVENUE*. Certiorari, 302 U. S. 678, to the Circuit Court of Appeals for the Ninth Circuit. Argued February 2, 1938. Decided February 7, 1938. *Per Curiam*: The judgment is affirmed. *Tyler v. United States*, 281 U. S. 497; *Gwinn v. Commissioner*, 287 U. S. 224. MR. JUSTICE CARDOZO and MR. JUSTICE REED took no part in the consideration or decision of this case. Mr. Philip G. Sheehy for petitioner. Mr. Andrew D. Sharpe, with whom Solicitor General Reed, Assistant Attorney General Morris, and Messrs. Sewall Key, Norman D. Keller, and Lee A. Jackson were on the brief, for respondent. By

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leave of Court, *Mr. W. H. Morrissey* filed a brief on behalf of the San Mateo County Title Co., as *amicus curiae*, in support of petitioner. Reported below: 90 F. 2d 486.

No. —, original. EX PARTE BRYANT MCQUILLEN ET AL. February 7, 1938. Motions for leave to file petitions for writs of mandamus and prohibition denied. The CHIEF JUSTICE and MR. JUSTICE STONE took no part in the consideration or decision of these applications.

No. —, original. EX PARTE CHARLES E. PHILLIPS. February 7, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. —, original. EX PARTE ANDREW B. YOUNG. February 7, 1938. Motion for leave to file petition for declaratory judgment denied.

No. 748. POOLE v. FLORIDA. Appeal from the Supreme Court of Florida. Decided February 14, 1938. *Per Curiam*: The appeal herein is dismissed for the reason that the judgment sought to be reviewed is based upon a non-federal ground adequate to support it. *Quong Ham Wah Co. v. Industrial Commission*, 255 U. S. 445, 448, 449; *Hebert v. Louisiana*, 272 U. S. 312, 316, 317; *Susquehanna Co. v. Tax Commission* (No. 2) 283 U. S. 297, 299, 300; *Liggett & Myers Tobacco Co. v. South Carolina*, 291 U. S. 652. The motion for leave to proceed further *in forma pauperis* is denied. *Mr. W. D. Bell* for appellant. No appearance for appellee. Reported below: 129 Fla. 841; 177 So. 195.

No. —, original. *EX PARTE ELBERT ELWOOD COGG*. February 14, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. 123. *ADAMS, RECEIVER, v. NAGLE ET AL.*; and

No. 124. *SAME v. TOBIAS ET AL.* February 14, 1938. Restored to the docket and assigned for reargument. *Messrs. Brice Clagett, Charles E. Wainwright, Charles W. Matten and George P. Barse* for petitioner. *Messrs. Edward W. Madeira, Lemuel B. Schofield and W. Bradley Ward* for respondents. Reported below: 88 F. 2d 936.

No. 738. *MOONEY v. SMITH, WARDEN*. Petition for writ of certiorari to the Supreme Court of California. February 14, 1938. The petitioner having withdrawn the motion for leave to proceed on a printed abstract of the record and having moved for time to present a brief in support of a petition for certiorari, the latter motion is granted, and it is ordered that petitioner have thirty days from this date in which to file with this Court and serve upon respondent a brief in support of the petition for certiorari, and that respondent have thirty days after such filing and service to file with the Court and serve upon petitioner an opposing brief. The parties may refer to the typewritten record in the respective briefs above mentioned. Questions in relation to the preparation and printing of the record or abstracts thereof will be reserved until the coming in of such briefs. *Messrs. Frank P. Walsh, John F. Finerty and George T. Davis* for petitioner. *Messrs. U. S. Webb, Attorney General, and William F. Cleary, Deputy Attorney General, of California*, for respondent. Reported below: 73 F. 2d 554.

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No. 768. *RUST v. PRATT, SHERIFF, ET AL.*;No. 769. *JENNINGS v. SAME*;No. 770. *ABBOTT v. SAME*; and

No. 771. *TIGERT v. SAME*. Appeals from the Supreme Court of Oregon. Decided February 28, 1938. *Per Curiam*: The appeals herein are dismissed (1) for the reason that the judgments sought to be reviewed are based upon a non-federal ground adequate to support them, *Doyle v. Atwell*, 261 U. S. 590; *Cox v. Colorado*, 282 U. S. 807; *Woolsey v. Best*, 299 U. S. 1; (2) for the want of a substantial federal question, *Twining v. New Jersey*, 211 U. S. 78, 106, 111-114; *Snyder v. Massachusetts*, 291 U. S. 97, 105; *Brown v. Mississippi*, 297 U. S. 278, 285; *Palko v. Connecticut*, 302 U. S. 319. *Mr. Mortimer Riemer* for appellants. No appearance for appellees. Reported below: 157 Ore. 505; 72 P. 2d 533.

No. 792. *WILLIAMS ET AL. v. QUILL, PRESIDENT OF THE TRANSPORT WORKERS UNION OF AMERICA, ET AL.* Appeal from the Supreme Court of New York. Decided February 28, 1938. *Per Curiam*: The motion of the appellants for leave to file supplemental statement as to jurisdiction is granted. The motion of the appellees to dismiss the appeal is granted, and the appeal is dismissed for the want of a final judgment. *Verden v. Coleman*, 18 How. 86; *Reddall v. Bryan*, 24 How. 420, 422; *Branan v. Harrison*, 284 U. S. 579. *Mr. Nathan W. Math* for appellants. *Messrs. Harold Sacher and George D. Yeomans* for appellees. Reported below: 277 N. Y. 1; 12 N. E. 547; 1 N. Y. S. 2d 507.

No. —, original. *EX PARTE WALTER GROSS*. February 28, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. 897, October Term 1936. *MCDONALD v. UNITED STATES*. February 28, 1938. The petition for a writ of error coram nobis is denied. MR. JUSTICE REED took no part in the consideration or decision of this application. See 301 U. S. 697; 302 U. S. 773.

No. 753. *GROVES ET AL. v. BOARD OF EDUCATION OF CHICAGO*. Appeal from the Supreme Court of Illinois. Decided March 7, 1938. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted and the appeal is dismissed (1) for the want of a final judgment, *Bostwick v. Brinkerhoff*, 106 U. S. 3; *Cotton v. Hawaii*, 211 U. S. 162, 170; *Georgia Ry. Co. v. Decatur*, 262 U. S. 432, 437; (2) for the want of a substantial federal question, *Phelps v. Board of Education*, 300 U. S. 319; *Dodge v. Board of Education*, 302 U. S. 74. Mr. John E. Groves and Mary E. Stanton, *pro se*. Messrs. Richard S. Folsom, Frank S. Righeimer, Ralph W. Condes, and Frank R. Schneberger for appellee. Reported below: 367 Ill. 91; 10 N. E. 2d 403.

No. 778. *ADLER ET AL. v. CINCINNATI ET AL.* Appeal from the Supreme Court of Ohio. Decided March 7, 1938. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted and the appeal is dismissed for the want of a substantial federal question. *Bellingham Bay & B. C. R. Co. v. New Whatcom*, 172 U. S. 314, 320; *Ballard v. Hunter*, 204 U. S. 241, 262; *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 283; *Witzelberg v. Cincinnati*, 302 U. S. 635. Mr. Edward M. Ballard for appellants. Mr. John D. Ellis for appellees. Reported below: 133 Ohio St. 129; 12 N. E. 2d 288.

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NO. 366. KANSAS FARMERS UNION ROYALTY CO. ET AL. v. SHAFFER, EXECUTOR, ET AL. Appeal from the Supreme Court of Kansas. Argued February 2, 1938. Decided March 7, 1938. *Per Curiam*: As it appears, after hearing argument, that there is no properly presented federal question, the motion of the appellants to reinstate the case for further consideration is denied and the appeal is dismissed. *Clarke v. McDade*, 165 U. S. 168, 172; *Chesapeake & Ohio Ry. Co. v. McDonald*, 214 U. S. 191, 193; *Hiawassee Power Co. v. Carolina-Tenn. Co.*, 252 U. S. 341, 343; *Witzelberg v. Cincinnati*, 302 U. S. 635. *Mr. L. E. Clevenger*, with whom *Messrs. B. I. Litowich and S. H. King* were on the brief, for appellants. *Mr. D. M. McCarthy, Kathryn O'Loughlin McCarthy, and Mr. Oscar Ostrum* were on the brief for appellees. Reported below: 146 Kan. 84; 69 P. 2d 4.

NO. 427. SZOLD v. OUTLET EMBROIDERY SUPPLY CO. Appeal from the Supreme Court of New York. Argued February 28, 1938. Decided March 7, 1938. *Per Curiam*: As it appears, after hearing argument, that no substantial federal question is involved, the appeal is dismissed. (1) *Dent v. West Virginia*, 129 U. S. 114, 122, 123; *Watson v. Maryland*, 218 U. S. 173, 176, 177; *Semler v. Dental Examiners*, 294 U. S. 608, 611, 612; (2) *Second Employers' Liability Cases*, 223 U. S. 1, 52; *New-York Central R. Co. v. White*, 243 U. S. 188, 207; (3) *Liebermann v. Van De Carr*, 199 U. S. 552, 562; *Douglas v. Noble*, 261 U. S. 165, 168, 169; *Highland Farms Dairy v. Agnew*, 300 U. S. 608, 612. *Messrs. Eugene L. Garey and Earl J. Garey* submitted the cause on brief for appellant. *Mr. Henry Epstein*, Solicitor General, with whom *Mr. John J. Bennett, Jr.*, Attorney General, of New York, was on the brief, for appellee. Reported below: 274 N. Y. 271; 248 App. Div. 865; 8 N. E. 2d 858; 291 N. Y. S. 395.

No. —, original. *EX PARTE HOWARD LEE*. March 7, 1938. The motion for leave to file a petition for writ of habeas corpus is denied without prejudice to appropriate application for review of the judgment of the Supreme Court of California on writ of certiorari or appeal. *Urquhart v. Brown*, 205 U. S. 179, 182, 183.

No. 817. *KANSAS GAS & ELECTRIC CO. v. MCPHERSON ET AL.* Appeal from the Supreme Court of Kansas. Decided March 14, 1938. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted and the appeal is dismissed for the want of a substantial federal question. *Springfield Gas Co. v. Springfield*, 257 U. S. 66; *Puget Sound Co. v. Seattle*, 291 U. S. 619, 624, 625. *Messrs. Henry L. McCune and Blatchford Downing* for appellant. *Messrs. William Drennan, J. Rodney Rhoades, and Claude I. Depew* for appellees. Reported below: 146 Kan. 614; 72 P. 2d 985.

No. 822. *HERING ET AL. v. STATE BOARD OF EDUCATION*. Appeal from the Court of Errors and Appeals of New Jersey. Decided March 14, 1938. *Per Curiam*: The appeal is dismissed for the want of a substantial federal question. *Hamilton v. Regents*, 293 U. S. 245, 261, 262; *Coale v. Pearson*, 290 U. S. 597; *Leoles v. Landers*, 302 U. S. 656. *Messrs. Abraham J. Isserman, Martin Conboy, Osmond K. Fraenkel, Carol King, and Olin R. Moyle* for appellants. No appearance for appellee. Reported below: 118 N. J. L. 566; 117 N. J. L. 455; 194 A. 177; 189 A. 629.

No. 558. *SHARP ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. Certiorari, 302 U. S. 680, to the Circuit Court of Appeals for the Third Circuit. Argued March 9, 1938.

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Decided March 14, 1938. *Per Curiam*: The judgment is reversed. *Freuler v. Helvering*, 291 U. S. 35, 43, 45; *Blair v. Commissioner*, 300 U. S. 5, 9, 10. *Mr. William Barclay Lex*, with whom *Mr. Charles C. Norris, Jr.* was on the brief, for petitioners. *Mr. A. F. Prescott* argued the cause, and *Acting Solicitor General Bell* was on a memorandum, for respondent. Reported below: 91 F. 2d 802.

No. —, original. EX PARTE JESSE C. DUKE. March 14, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. —, original. EX PARTE NAT J. HUMPHRIES. March 14, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. 13. UNITED GAS PUBLIC SERVICE CO. v. TEXAS ET AL. March 14, 1938. It is ordered that the opinion in this cause be amended by striking out the period after the words "and return" in line 3, on page 14, and inserting the words "for the period to which the evidence before the Court appropriately related and not simply for the years 1932 and 1933." The petition for rehearing is denied. Reported as amended, *ante*, p. 123.

No. 161. SOUTH CAROLINA STATE HIGHWAY DEPT. ET AL. v. BARNWELL BROTHERS, INC., ET AL. March 14, 1938. It is ordered that the opinion in this cause be amended by substituting for the words "But as the district court held," in the last sentence of the last full paragraph on page 4 of the opinion, the following words: "But appellees do not challenge here the ruling of the district court that." The petition for rehearing is denied. Reported as amended, *ante*, p. 177.

ORDER. March 14, 1938. In view of pending legislation General Order No. LIII in Bankruptcy is hereby suspended until further order of the Court.

No. 840. EDGAR BROTHERS CO. *v.* STATE REVENUE COMMISSION ET AL. Appeal from the Supreme Court of Georgia. Decided March 28, 1938. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted and the appeal is dismissed for the want of a final judgment. *California National Bank v. Stateler*, 171 U. S. 447, 449; *Haseltine v. Central Bank of Springfield (No. 1)*, 183 U. S. 130, 131; *Bruce v. Tobin*, 245 U. S. 18; *Mississippi Central R. Co. v. Smith*, 295 U. S. 718. *Mr. Orville A. Park* for appellant. *Messrs. M. J. Yeomans and O. H. Dukes* for appellees. Reported below: 185 Ga. 216; 194 S. E. 505.

No. 857. KIRKPATRICK *v.* HARDT. On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. Decided March 28, 1938. *Per Curiam*: The motion for leave to proceed further herein *in forma pauperis* is denied for the reason that the Court, upon examination of the papers herein submitted, finds that the application for writ of certiorari was not made within the time provided by law. Act of February 13, 1925, sec. 8 (a) (43 Stat. 936, 940). *Finn v. Railroad Commission*, 286 U. S. 559; *Cresswell &c. v. Tillinghast*, 286 U. S. 560. The petition for writ of certiorari is therefore also denied. *Mr. James Martin Kirkpatrick, pro se.* No appearance for respondent. Reported below: 91 F. 2d 857.

No. —, original. EX PARTE ALBERT R. HOUSE. March 28, 1938. The rule to show cause herein is discharged and the motion for leave to file petition for writ of habeas corpus is denied.

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No. —. THE SILVERSHIRT LEGION OF AMERICA, INC. ET AL. v. COMMITTEE ON EDUCATION AND LABOR OF THE UNITED STATES SENATE ET AL. March 28, 1938. The application for preliminary injunction pending application for writ of certiorari is denied.

No. 847. POPE v. UNITED STATES. March 28, 1938. Motion to remand to the Court of Claims for further findings denied.

No. 871. HELLER v. CONNECTICUT. Appeal from the Supreme Court of Errors of Connecticut. Decided April 4, 1938. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Mugler v. Kansas*, 123 U. S. 623, 668-669; *Reduction Company v. Sanitary Works*, 199 U. S. 306, 324-325; *Hudson Water Co. v. McCarter*, 209 U. S. 349, 356; *Perley v. North Carolina*, 249 U. S. 510; *Euclid v. Ambler Realty Co.*, 272 U. S. 365, 388, 389; *West Brothers Brick Co. v. Alexandria*, 302 U. S. 658. *Mr. Nathan* April for appellant. No appearance for appellee. Reported below: 123 Conn. 492; 196 A. 337.

No. 892. ALLBRITTON ET AL. v. WINONA. Appeal from the Supreme Court of Mississippi. Decided April 4, 1938. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Jones v. Portland*, 245 U. S. 217; *Green v. Frazier*, 253 U. S. 233; *Milheim v. Moffat Tunnel Dist.*, 262 U. S. 710, 717; *Carmichael v. Southern Coal Co.*, 301 U. S. 495, 514, 515. *Mr. W. E. Morse* for appellants. No appearance for respondent. Reported below: 181 Miss. 75; 178 So. 799.

No. —, original. EX PARTE MIKE J. LINDWAY. April 4, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. —, original. *EX PARTE J. R. PALMER*. April 4, 1938. Motion for leave to file petition for writ of habeas corpus denied.

No. 16, original. *MISSOURI v. IOWA*. April 4, 1938. The answer of the defendant is received and ordered filed.

No. 805. *INDIANA EX REL. VALENTINE v. MARKER, TRUSTEE*. On petition for writ of certiorari to the Supreme Court of Indiana. Decided April 11, 1938. *Per Curiam*: The petition for writ of certiorari is granted and the judgment is reversed upon the authority of *Indiana ex rel. Anderson v. Brand, ante*, p. 95. MR. JUSTICE BLACK dissents. *Messrs. Paul R. Shafer and Thomas F. O'Mara* for petitioner. No appearance for respondent. Reported below: 213 Ind. —; 8 N. E. 2d 231.

No. —. *PALKA v. WALKER, WARDEN*. April 11, 1938. The application for stay of execution pending filing of petition for writ of certiorari is denied.

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No. 647. *BATES MANUFACTURING CO. v. UNITED STATES*. January 31, 1938. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit granted. *Messrs. Charles B. Rugg, F. Brian Holland, and Warren F. Farr* for petitioner. *Solicitor General Reed, Assistant Attorney General Morris, and Messrs. Sewall Key and F. E. Youngman* for the United States. By leave of Court, *Messrs. Theodore B. Benson and John Jennings, Jr.* filed a brief on behalf of Pinnacle Mills, as *amicus curiae*, in support of petitioner. Reported below: 93 F. 2d 721.